for The Defense

Volume 4, Issue 9 ~ ~ September 1994

The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

CONTENTS:

Bungee Jumping & Public Defending: Taking Calculated Risks

by Christopher Johns

We always tell our clients that taking a case before a jury is like a crap shoot; it's a roll of the dice. You never know what may happen. And everyone has their favorite war story involving a "trial break" when the most improbable circumstances turned the case in their favor. The very nature of the adversary system means there are wins and losses against the odds. You never really know what's going to happen.

There is risk in criminal defense work. People's lives are in the balance. Some risks, like being unprepared, may be tragic and inexcusable. Other risks, like finding innovative ways to relate to juries and try cases, may be calculated and brilliant. Of course, like the *Serenity Prayer*, the wisdom is in knowing the difference. In Forrest Gump's words, "Do not ever roll dice with a guy called 'Bones'." Sound advice.

Closing Arguments

"It is the spirit and not the form of the law that keeps justice alive," according to Justice Earl Warren. So it is with closing arguments. Some of what follows I've borrowed (stolen) from a myriad of sources (too many to mention)--including instructors from the National Criminal Defense College, the National Institute for Trial Advocacy, and an excellent trial lawyer with the Missouri State Public Defender's Office named Kathy Kelly. Some is what I've learned on my own. Some is conventional wisdom. And some will probably seem like heresy. Try to keep an open mind. Here goes:

**Closing alone ain't enough*

There an old saying that "[l]awsuits are won or lost on the evidence and the law." That's hard to believe. Skill, preparation, strategy, and chutzpa, in my opinion, may make a world of difference in a lawsuit. It is probably true, however, that lawsuits are *not* won with just oratory. A case is won during the trial and not at the conclusion of it. Snatching victory from the jaws of defeat in your closing is fairly unlikely. But a well-prepared, persuasive closing argument, at the end of a lawsuit that has a theory of the case, with good cross-examination and direct, may make the difference.

Why does it make a difference? Because opening and closing are the only two times you speak directly to the jury. You've got to know what you want to accomplish if you want to make a difference.

(cont. on pg. 2)☞

**Speaking Nonverbally*

If you want to be a trial lawyer and you're not watching preachers preach, you're missing it. These people are experts at communication. They make their living from it (as do we). They know how to move their audience, to persuade them, to make them give $$$$. What preachers know that many trial lawyers forget is that how you present yourself and your message is sometimes critical.

Okay, you may call it style if you want to and convince yourself that it doesn't matter. You can't be someone else, but you can improve your communication style. Here are a few tips:

A. *Have an open posture.*

Folded arms, hands behind your back, hands in the pockets, hands hidden by a lectern or podium don't cut it. Why do we shake hands? Using our right hand signifies that we are unarmed. Why do the jurors need to see your hands? Having your hands in front of your body, preferably extended outward toward jurors when you speak, opens you up to the jurors. In the human experience, physically opening up generally means that you are mentally and psychologically also opening up. An open posture with measured hand gestures engenders trust and confidence. Isn't that what you want the jurors to feel?

Talking with jurors should be like extending your hand to them in friendship, making them feel at home in your environment (the courtroom).

What should you remember? Keep your hands visible. Eliminate any physical barrier between you and the jurors. If you must use a lectern, stand to the side of it.

B. *Address folks face to face*

I know this sounds elementary, but go into any trial in Maricopa County Superior Court, and often you see body language that is inconsistent with this basic, effective communication device. How do you know for sure that your child is listening to you? It's not uncommon to have a mom say " Look at me when I'm speaking to you." Why? We turn away from people out of aversion or timidity. We also avoid people when we feel uncomfortable.

When talking with jurors, treat each juror as an individual person with whom you must connect. Talking with jurors should be like extending your hand to them in friendship, making them feel at home in your environment (the courtroom). In your closing, especially when you are trying to persuade, eye contact is crucial. Don't skim over jurors. Instead, look at each one for several seconds before moving on to the next.

"Looking" is important. It is as important (if not more so) as all other kinds of body language. Maintain eye contact as much as possible. That's why notes are distracting to jurors--because every time you look down you break eye contact with whom you are speaking.

On the other hand, don't stare. Looking means meeting people with your eyes in an open fashion.

C. *Stance*

Again, watch professionals. Watch actors and preachers. Stance is important. Leaning and acting nonchalant say one thing. Pacing says another. Foot taping and other nervous habits say something else again.

Plant your feet in a balanced stance. As Judge Howe says in his trial advocacy training, "Feel the floor with your feet." Your feet need to be planted firmly so that you are grounded and do not look nervous. Don't do a lot of talking and walking. It's much more effective to walk to a spot and resume speaking. All jurors then will be focused on you and waiting for what you have to say (make it important).

(cont. on pg. 3)☞

for The Defense

Editor: Christopher Johns
Assistant Editors: Georgia Bohm
Heather Cusanek

Office: 132 South Central Avenue, Suite 6
Phoenix, Arizona 85004
(602) 506-8200

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. ***for The Defense*** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

In closing, you may touch people at least three ways: through your eyes, by your choice of words, and through effective use of hand gestures. To improve these tools only takes practice and the willingness to take a risk. Can I find a way to say it better? How do I look to others? What are my hands and feet saying? Are they saying I'm confident of myself and my client's innocence? Add these factors to preparation and you have one more element of a winning arsenal.

Burden of Proof

Now it's time for controversy. Here it is. I say (having absorbed this idea from many, better practitioners than I) that arguing reasonable doubt is not always necessary in your closing. What! Don't argue burden of proof?--why, that's malpractice! You must argue reasonable doubt. No, you mustn't--especially if you are creative and willing to grab on to the bungee cord, and if you have really thought through your case and done a good job in opening, cross, direct, jury instructions, etc.

Here's my logic. The burden of proof in a trial is a matter of law and fact. Most of all, however, the burden of proof is a legal principle (to some jurors a "technicality"). Sure, there are cases where maybe all you have is "reasonable doubt." But why muck up a case where you have a good defense by appealing to "technicalities."

If you have a strong affirmative defense, for example, misidentification or self-defense, aren't you really saying that your client is *factually* INNOCENT. And when you spend excessive or perhaps even just a little time on reasonable doubt, aren't you really saying my client is guilty but they didn't have enough evidence. That to me seems more risky.

. . . arguing reasonable doubt is not always necessary in your closing.

Unless you can make reasonable doubt much more clear than anyone before you, your jury will know reasonable doubt when it sees it. The prosecutor will talk about it. The judge will explain it. The jury instructions will accompany the jurors through deliberations.

"You know, ladies and gentlemen, I'm not going to waste your time explaining reasonable doubt because my client is innocent. The prosecutor has already spoken to you about it. The judge is going to read a definition to you and give you a written copy. I want to talk to you about why my client is not guilty."

Is talking about why your client is not guilty the same as reasonable doubt? Sure it is. But you don't have to call it that. Because reasonable doubt may in fact be inconsistent with all the proof you can show the jury as to why your client is not guilty.

Being a criminal defense lawyer does not mean repeating the same spiel for every case. Stock stories and homilies have their place, but they are no substitute for a consistent theory of the case based on themes.

Ten Mini Closing Rules

Rule 1: You must have a case theory

Unlike a law school exam, a jury trial is one place where the shotgun approach doesn't work. Reciting a bunch of facts, multiple inconsistent theories, and not knowing where you are going can only hurt your client. That's not to say that some cases aren't extremely difficult to develop a case theory for; they are. But, hey, that's why we're highly paid practitioners. Your theory should also have identifiable themes, and you should be able to sum it up in just a few words--even if it's just "some other dude did it."

Rule 2: The case has to matter to you.

This rule, as well as most of the others, is reciprocal. If you don't care about your client, the job you are doing, your belief in the constitution, or some other moral or internal imperative--it will show. Something in *this* case has to stir the advocate in you.

You can't watch or read *To Kill a Mockingbird* without knowing that Atticus Finch cares about his client. When he stands before the jury in his closing, every fiber in his being proclaims his client's innocence. The case must matter.

Rule 3: Avoid the plain, chronological closing approach

If you've tried cases you've done it. I have. The laundry list approach in trying to persuade jurors. Okay, sometimes it's all you've got. But remember, it's boring and rarely shows the true interrelationship between events and people. Take a risk. You may start in the middle or at the end. Argue, don't summarize.

Rule 4: Avoid witness-by-witness approach

This is also just a laundry list approach. To argue, you want to make inferences and conclusions, and rarely will all of the witnesses in a case appear in the order that will best make them. Hence, you need to re-organize the witnesses to fit with events, ideas, etc.

(cont. on pg. 4)☞

Rule 5: Address the legal issues

Okay, if you must argue reasonable doubt it fits in here. But usually there are actually more important legal issues. For example, if the suggestive line-up or in-court identification is not suppressed (that would be something), you may still argue the legal significance of those issues. A suggestive line-up is bad not just because it violates the law, but the law's purpose--to prevent unreliable identifications. Same with a confession.

Rule 6: The Facts

"Just the facts, ma'am." You've got to deal with the bad facts. You have to deal with the "why" of the case, motivation, evidence, contradictions, time gaps, and missing evidence.

Rule 7: Be visual

People learn in different ways. Don't just make your argument with words. Try pictures. Use the evidence in your closing. You can show the exhibits again to the jury. Better yet, make demonstrative aids for the closing to help jurors understand why your client is innocent.

Rule 8: Don't dance alone

Remember, the prosecutor is also at this trial. You must meet his/her argument (if credible). Show the prosecution's weak points. Invite reply, but only if it is a trap to emphasize the strong points of your case. Comment on what he/she left out. Remember primacy and recency. Have a kicker in the beginning, middle, and especially at the end. Organize around your theme and theory of the case.

Rule 9: Careful what you ask for but ask for what you want

Know what you want and don't be afraid to ask, especially when dealing with lesser included offenses. Scrutinize the verdict forms.

Rule 10: Use Jury Instructions as An Advocate

Jury instructions, whenever possible, should be ready to be submitted before trial. Be creative. Argue on the record. Be prepared to incorporate selective instructions into your closing (but you don't have to refer to them). Ω

Forfeiture Flow

by Marty Lieberman

So you want to know something about forfeiture. You'll be sorry! The architects of the forfeiture statute at the Attorney General's Office seem to have done their best to make this procedure one of the most confusing you could imagine outside the tax laws. The following flow chart (see pages 18 - 20) has been designed in an effort to make this all a little bit easier. Please note that this flow chart deals *only* with forfeitures commenced under State law. Federal law is a completely different beast.

The flow chart begins with the ways in which the State may initiate a forfeiture, e.g., through a search or probable cause to believe property is subject to forfeiture. Most of the time, someone is arrested for a drug or money crime and the property is seized. There is a special circumstance for real property based upon recent Supreme Court case law. One may not be dispossessed from his or her home with a prior hearing. The second line of the flow chart covers that situation.

After property is seized for forfeiture, the State must give notice to persons "known to have an interest." There are certain rules the State must follow and they are shown in the next portion of the flow chart.

After property is seized, the person claiming the property has some options. Optional rights are indicated in the flow chart by a dotted line. First, the claimant may substitute cash for the property and then fight over the cash rather than the property. Most of the time, this is an illusory right. More importantly, the claimant has the right to seek a 15-day probable cause hearing (similar to a preliminary hearing in a criminal case). The winner of the hearing holds the property until the forfeiture case is over. If the claimant wins, however, the State may still proceed with its forfeiture case.

The second page of the flow chart describes the administrative forfeiture procedure. The State has three options in deciding what to do with property that has been seized for forfeiture. They may choose not to seek forfeiture. They usually try to exact a release in exchange. If they do proceed, they may proceed judicially or administratively. If the State makes "uncontested forfeiture available," they are permitting the filing of a "petition for remission or mitigation" administratively, i.e., with their agency (e.g., Maricopa County Attorney's Office or Phoenix City Prosecutor's Office). If the case may be worked out administratively, then there is no need to go to court.

(cont. on pg. 5)☞

If the State does not make "uncontested forfeiture available," then a claimant must file his or her claim in court; the administrative procedure is not available. Note, however, that even if "uncontested forfeiture" is made available, the claimant chooses which forum he wishes to enter. He or she may choose to file a claim in court even if "uncontested forfeiture" is available. Also note that if the administrative route is chosen and a resolution cannot be achieved, the claimant retains the right to subsequently file a claim in superior court.

The third page of the flow chart describes the judicial procedure. Claims will be litigated in court if the administrative process is unavailable, if the claimant chose to bypass it, or if the administrative process did not produce a satisfactory result. After the claim is filed, the State must file a complaint which may be *in rem*, *in personam*, or both. Refer to your civil procedure books for an explanation of those archaic terms.

After the complaint is filed, the litigation proceeds as most other civil litigation with a few exceptions. The statute provides for a speedier hearing date and specifically states that the hearing is before a judge (not a jury). The burdens of proof at the hearing are described in the flow chart. In short, the claimant must first establish that he is an owner of the property. After that, the State must establish that the property is subject to forfeiture. If they do, then the claimant must establish the existence of an exemption, e.g., that he or she was an innocent owner.

Note that if the claimant loses, he or she *shall* pay the State's costs and fees. There is no such provision if the State loses.

I hope this helps.

The architects of the forfeiture statute at the Attorney General's Office seem to have done their best to make this procedure one of the most confusing you could imagine outside the tax laws.

Editor's Note: A special thanks to Marty Lieberman for creating this article and flow chart at the request of and for the use of the Maricopa County Public Defender's Office. Mr. Lieberman is a criminal law specialist in private practice in Phoenix, Arizona. His practice concentrates in the areas of criminal defense and forfeiture. Ω

What Judges Can Do to Ensure Equality for Women and Men in the Courts

Bias-Free Behavior In The Judicial System

1. *ADDRESS BOTH WOMEN AND MEN BY LAST NAMES AND APPROPRIATE TITLES.*

* counselor or attorney
* Mr./Ms. (unless Miss or Mrs. is requested)
* Dr. or Officer or Representative/Senator

Women should not be addressed informally while their male counterparts are addressed in a formal or professional manner. To avoid disparate treatment, or even the appearance of disparate treatment, address both women and men in the same formal or professional manner. In private conversation or social settings, first names and other informal address may convey a friendly or casual attitude; in the public setting, where courthouse business takes place, they suggest a lack of respect.

2. *ADDRESS MIXED GROUPS OF WOMEN AND MEN WITH GENDER NEUTRAL OR GENDER INCLUSIVE TERMS.*

* colleagues
* members of the jury
* members of the bar
* counselors
* ladies and gentlemen

Referring to a mixed group as "brothers" or "gentlemen" indicates that women are not legitimate members of the community to be taken seriously. Even if a group is primarily male and only one or two women are present, language should describe everyone present.

3. *TERMS OF ENDEARMENT AND DIMINUTIVE TERMS DO NOT BELONG IN COURTHOUSE INTERACTIONS.*

* honey, sweetie, dear
* little lady, pretty girl, young lady

Terms of endearment and diminutive terms imply that women have lower status or less power. These terms

(cont. on pg. 6)☞

can demean or offend women even if the speaker does not intend to do so.

4. *AVOID COMMENTS ON PHYSICAL APPEARANCE.*

* physical characteristics
* hair style
* dress style
* pregnancy

Comments on physical appearance may be demeaning and put people at a disadvantage by drawing attention to their gender rather than the reason for their presence in court. Comments appropriate in a social setting often are inappropriate in a professional setting. For example, complimenting a female attorney on her appearance or drawing attention to her pregnancy while she is conducting business may undermine the way others perceive her.

5. *JOKES AND REMARKS WITH A SEXUAL CONTENT, OR JOKES AND REMARKS THAT PLAY ON SEXUAL STEREOTYPES, ARE OUT OF PLACE IN THE COURTHOUSE SETTING.*

Everyone in the courthouse must protect the dignity and integrity of the court and show respect for every other person. Sexual, racial, and ethnic jokes and remarks have no place in the courthouse or in the administration of justice.

6. *COMMENTS, GESTURES, OR TOUCHING THAT MAY OFFEND OTHERS OR MAKE THEM UNCOMFORTABLE HAVE NO PLACE IN THE COURTHOUSE.*

Because touching may be offensive or give the appearance of impropriety, it should be avoided. A person who is touched may not feel free to interrupt or complain, especially if the person doing the touching is in a position of authority, such as a supervisor touching an employee or a judge touching a litigant, witness, juror, or attorney.

Sexually suggestive comments, gestures, and touching, as well as sexual advances, humiliate and intimidate people and undermine the dignity of the court. Such acts may also constitute sexual harassment, which is now prohibited by law and subject to sanctions pursuant to court policy.

7. *TREAT WOMEN AND MEN WITH EQUAL DIGNITY, MINDFUL OF THEIR PROFESSIONAL ACCOMPLISHMENTS.*

Gender bias surveys have found that women attorneys are asked if they are attorneys three times more often than men are asked. Do not ask a woman about her professional status when you would not ask the same question of a man. To avoid this, use a question that applies to everyone such as, "Will all attorneys please identify themselves to the court?" When addressing a man and a women, always use consistent forms of address such as "Attorney X" and "Attorney Y." Do not call the man "Attorney X" and the woman "Ms. Y."

8. *RESPOND ASSERTIVELY TO GENDER BIASED MISCONDUCT.*

No matter what role one plays in the judicial process--judge, court employee, litigant, witness, or juror--everyone has the right to be treated with dignity and respect. Therefore, to ensure a bias-free court environment, judges must intervene when an attorney, witness, juror, or other individual under their supervision behaves inappropriately toward another in any professional setting. Ω

Criminal Bench Survey Update

In the summer of 1991, our office's training division initiated a criminal bench survey designed to help assess our training needs and to provide a means for the trial judges to communicate their ideas about effective and professional representation of clients. Since that initial survey, we have updated the survey (in 1992 and again this year) to reflect the changes on the criminal bench. The response from the judges continues to be gratifying and very helpful. Our updated surveys soon will be distributed to each trial group supervisor for our attorneys' and staff's reference. Ω

Maricopa County defenders could save Simpson millions

By Bill Davis
Tribune writer

Government is criticized regularly for being inefficient, bloated and expensive. So it's a change to see--in one area at least--Maricopa County government provides something far more cheaply than the private sector.

That something is legal defense.

Take one of the most notorious murder cases of the century, in which O.J. Simpson stands charged with slaying ex-wife Nicole Brown Simpson and her friend Ronald Goldman.

Simpson's lead defense attorney, Robert Shapiro, charges $650 an hour.

Compare that fee with the Maricopa County Public Defender's Office, which spends an average of $613.96--per case.

And speaking of the $650-an-hour tab Simpson is running up, that is just Shapiro's portion. At last count, there were seven other attorneys crowding around the Simpson defense table. Not including fees for expert witnesses and investigators, Simpson's bills in the case are estimated to top $30,000 a week.

Except on murder cases, attorneys for the Public Defender's Office work alone. And the average annual salary for the office's 110 trial lawyers is $49,920, or about $24 an hour, which works out to about a week and a half of Simpson's legal fees.

And lest anyone think this is like comparing canned meat with top sirloin, consider that of the 401 felony cases last year the Maricopa County Public Defender's Office went to trial on, 20 percent of the defendants received innocent verdicts. Fewer than half of the cases, or 171, came back with guilty-as-charged verdicts. The majority of defendants were found guilty of lesser charges.

Legal representative Louis Rhodes of the Arizona chapter of the American Civil Liberties Union gives the County Public Defender's Office high marks despite its overwhelming caseload.

"It isn't shocking to find that if you are wealthy you get good legal representation," Rhodes said. "What is shocking--and commendable, I guess--is that (the Maricopa County Public Defender's Office) is better than most other places for dealing with the meat grinder that is our legal system."

And big money can't always buy a good outcome. Consider a recent celebrity case to make national news. In the Los Angeles trials of Erik and Lyle Menendez charged in the shotgun slayings of their parents, both juries deadlocked.

The Menendez brothers went into their trials with about $17 million--some $2 million more than the past year's entire budget for the Maricopa County Public Defender's Office.

Now the Menendez brothers are pleading poverty and requesting public defenders for their retrials.

And Simpson's estate was worth about $10 million at the time of his arrest. To pay for his mounting legal fees, he has signed over to his attorneys the deed to his $5 million Tudor-style mansion.

It is instructive to remember the words of an attorney of an earlier generation, Percy Foreman of Houston. In the late 1960's Foreman successfully defended Texas socialite Candy Moessler, charged with killing her wealthy husband.

After an innocent verdict was returned, Moessler sued Foreman, alleging that he had left her destitute and even gone so far as so take her wedding rings off her fingers when she ran out of money to pay him.

Foreman admitted taking her jewelry, telling the court, "I said I'd get her off. I never told her she wouldn't pay for the crime."

(cont. on pg. 8)☞

O.J. Simpson's defense team	V S	Maricopa County Public Defender's Office

While experts predict O.J. Simpson will spend millions of dollars on legal fees to defend himself from charges that he killed his former wife and her friend, the Maricopa County Public Defender's Office shuffles defendants through its system for a fraction of the cost per defendant.

■ Simpson's attorney Robert Shapiro charges **$650** an hour. The legal bills of his eight-attorney defense team are exceeding **$30,000** a week.	■ The Public Defender's Office average annual salary for the 110 trial lawyers in the Public Defender's Office is **$49,920** or **$24 an hour**, or about a week and a half of Simpson's attorney bill.
■ Simpson has spent an estimated **$100,000** thus far for a jury consultant to help select potential jurors.	■ Which is about the entire amount, **$110,000**, that the public defender's office spent all last year on expert witness fees, or about $275 a trial.
■ Potential witnesses in the Simpson case are already cashing in. Jose Cammacho, the clerk who sold Simpson a 15-inch stiletto, got **$12,500** from the *National Enquirer*, talking to them about the knife sale. Jill Shively, who said she saw Simpson's Bronco near the site of the slaying, got **$5,000** for retelling her story to the television news magazine *Hard Copy*.	■ Maricopa County defense witnesses, on the other hand, are lucky to get **covered parking** when they come to testify.
■ Simpson had his own **1-800 hotline.**	■ Maricopa County jail inmates are allowed **one reverse charges phone call** a day.
■ Simpson's business manager has offered **$500,000** for information establishing his innocence.	■ The Public Defender's Office last year spent **$5,500** for all its investigative travel.
■ The Los Angeles County Sheriff's Department spent **$46,000** in July guarding Simpson and taking him to court in a special van instead of the usual jail bus.	■ It costs about $49 a day to house a Maricopa County inmate awaiting trial, or about **$1,500** a month.
■ Simpson's legal defense will probably cost up to **$10 million**. When the case ends, he will likely finish broke.	■ Last year the Public Defender's Office, with a **$15 million** budget, handled 80 percent of all the criminal cases in Maricopa County.

Mark Waters/Tribune Ω

Arizona Advance Reports

Editor's Note: Desperately seeking appellate editor. Since Bob Doyle left our office for a lucrative private practice, the appellate editor position with our esteemed publication has been vacant. The newsletter could use some help. If anyone is interested in either taking over for Bob or just helping me out by summarizing some of the cases--don't be shy--please give me a call at 506-8200.

Volume 170

State v. Superior Court (Steen)
170 Ariz. Adv. Rep. 12 (Div. 1, 07/26/94)
Trial Judge Joseph D. Howe

Defendant was charged with violating A.R.S. sections 28-692(A)(1) (driving while under the influence) and 692(A)(2)(having a BAC of 0.10 or more within two hours of driving). At the city court trial, the defendant was acquitted of the (A)(2) charge and the jury hung on driving while under the influence.

Before the second trial, the court granted a motion suppressing the use of the defendant's BAC for the DWI charge. The state appealed to the superior court which also suppressed the BAC test results.

The state claims that a general acquittal verdict does not estop it from re-introducing the BAC at the second trial. In order to collaterally estop the state from re-litigating a point in a subsequent prosecution, it must be shown that the fact was "necessarily adjudicated" in the prior prosecution. Since the jury necessarily concluded that the BAC was less than 0.10, the state may *not* assert that the defendant's BAC was 0.10 or greater. But this does *not* preclude the state from introducing the results of the breath test at retrial--since the jury could have concluded that the defendant's BAC was less then 0.10 when driving and later rose to 0.11 and still found him not guilty. Judge Howe erred. The state may introduce the test result and any other evidence (e.g., the HGN test) to show [only] that the defendant had alcohol in his system when arrested. Remanded for further proceedings consistent with the opinion.

State v. Hummert
170 Ariz. Adv. Rep. 17 (Div. 1, 07/26/94)
Trial Judge Michael B. Dann

Defendant was convicted of two counts of sexual assault. At gunpoint a nineteen-year-old woman was taken from her car and forced into a yard where she was sexually assaulted in two separate acts. After the complaining witness bit the defendant, she was hit severely in the head. The complaining witness got a partial plate number and the car's make. Later she saw the same car at a fast food restaurant in her neighborhood.

Defendant asserted he was at a party at the time and said his arm injury was from work. Defendant's alibi witnesses later changed their story and reported that the accused had pressured them as to the time he left the party. At trial the state also introduced a prior act where defendant allegedly followed another woman and was stopped by police. Hair evidence was introduced showing matching characteristics with the defendant's (from the complaining witness's underpants). Blood and semen tests were inconclusive. DNA testing of the semen, however, matched the defendant's.

DNA Match

A DNA match is strong evidence that samples came from the same person. Interpreting DNA typing analysis, however, requires a scientific method for estimating the probability that a random person by chance matches the sample at the sites of DNA variation examined. In this case, the prosecution relied on FBI testing. The type of test employed by the FBI (restriction fragment length polymorphism) does not detect an entire DNA strand. Ultimately, the matching process relies on a visual comparison to allele bands. In determining the probability issue, labs relied on previously established databases. In order to properly validate a match, there must be a showing that a sufficiently large and random database exists as foundation for any expert's opinion.

Here the trial court held a hearing to determine whether the DNA evidence met *Frye*. Following testimony, the trial court found that DNA theory and the procedures by which the FBI used were generally accepted. The trial court ordered, however, the statistical probability evidence was inadmissible because it was unfairly prejudicial under Rule 403. While this matter was on appeal, the Arizona Supreme Court decided the *Bible* case. *Bible* left open the issue of whether a match may still be introduced once it is determined that the statistical calculations are inadmissible.

(cont. on pg. 10)☞

Defendant argues that all DNA evidence should have been suppressed, since it is meaningless with statistical analysis. Here the FBI testified that the possibility of a random match was "rare" and that it would have had to come from a brother or that it would be a very unique experience. The experts' testimony, however, should not have been admitted. In the absence of generally accepted population frequency statistics for determining a random match, the experts overstated the significance of the DNA results. By their testimony, the state's experts conveyed to the jury the suppressed statistics.

Here, however, the court must employ a harmless error analysis. There is a great deal of evidence that also supports the conviction. The Arizona Supreme Court has held, however, that sufficiency of evidence is not the focus of harmless error analysis. Instead, to affirm the defendant's conviction, the court must be confident beyond a reasonable doubt, that the error had no influence on the jury's judgment. In this case, the complaining witness's testimony as to identification was equivocal. She mis-identified the defendant prior to trial (but identified him in court). The state's case theory also heavily relied on the DNA match. The defendant's convictions are reversed. On retrial the state may introduce evidence regarding a match if it is accompanied by the explanation that such a match signifies that the defendant is not excluded as the donor. Any further statement is inadmissible in the absence of random match probability data meeting *Frye*.

Other Acts

Defendant also argues that Rule 404(b) evidence that he previously followed a woman one morning should have been excluded since it was offered to prove "bad character." Here the court finds that it was proper to prove identity. To be admissible as a prior act, it must be shown that (1) that the defendant committed the prior act and (2) that it was not too remote in time, similar to the charged offense and committed with a similar person. It is admissible since the act occurred only five months prior, and there were numerous similarities. Nor is the testimony excluded under Rule 403.

Reverse Rule 404(b)

Defendant argues that evidence that he was ruled out of a prior sexual assault in Mesa should not have been precluded. The trial court excluded it because there want not *an inherent tendency to connect* the offenses. There were sufficient similarities to warrant this evidence under Rule 404(b). In the Mesa case, defendant was excluded by the victim in a photo line-up. Also, his hair did not match. Still, there were numerous similarities in how the assaults occurred. Cases have shown that there is a lower threshold for reverse 404(b) evidence. The court will not address that issue here; however, there were sufficient similarities to warrant its introduction. Likewise, the trial court's reliance on 403 is misplaced. The factors listed in Rule 403 were not in the record. Rule 403 should be used sparingly as an extraordinary remedy.

Identification

Defendant claims the in-court identification was unduly suggestive under *Dessureault* since he was only person sitting by defense counsel. Defendant did not claim suggestive pretrial identification procedures. The complaining witness's in-court identification is not unduly suggestive. It normally requires a prior suggestive out-of-court procedure.

Reversed and remanded.

State v. Cornell
170 Ariz. Adv. Rep. 43 (Sup. Ct. 08/02/94 *en banc*)
Trial Judge Gregory Martin

Defendant was convicted of first degree murder, attempted first degree murder, aggravated assault, and first degree burglary. Defendant was sentenced to death. Defendant killed his girlfriend with whom he had a violent and stormy relationship. He also wounded her father. He then fled. He later sought counsel from a pastor who took him to the police station where defendant voluntarily surrendered.

Indictment

Defendant claims that reading an indictment to the jury, where the grand jury had already determined there is evidence showing guilt, is error. First, defendant failed to object to the indictment's reading at the trial level and so is precluded from raising the issue absent fundamental error. Second, it was not error, fundamental or otherwise. This claim has been previously rejected in Arizona because the trial court may instruct the jury that the indictment is not evidence. The instruction is sufficient to avoid prejudice.

(cont. on pg. 11)☞

Television Interviews

Defendant claims that the trial court's refusal to pay for obtaining copies of television interviews with witnesses is error. There is no unlimited right, however, to have all the items necessary for a defense. It must be for a good reason and the decision is within the trial court's discretion. Here two tapes were available without charge. Had the defendant made an argument based on those tapes, perhaps he could have shown the prejudice of not having the third.

Counsel Waiver

Defendant argues that his counsel waiver was invalid because there was no determination he was competent to do so--in light of his temporary insanity defense. The review standard for counsel waiver is unsettled. The court will leave the standard issue undecided by analyzing under both the "de novo" and "deferential standard."

Here the defendant asserts that once he raised the insanity defense, the court should have ordered a competency examination. Waiver must be knowingly, intelligently and voluntarily in accordance with *Faretta v. California* and *Edwards v. State*. If the defendant had been insane at trial time, a competency exam should have been ordered. But no one alleged that he was mentally ill at the trial. Instead, defendant argued temporary insanity and his own expert said he was sane at the trial. A competency determination is needed only when there are circumstances known to the judge that there is a doubt about the accused's competency. Here there is no evidence that defendant was incompetent at trial. He answered questions intelligently and prepared numerous handwritten motions.

Plus, the defendant's claim that he was not adequately warned about the inconsistency of his insanity defense and waving counsel must also fail. The court did point out specific concerns and problems, as well as the defendant's request for "advisory counsel."

Lastly, the insanity defense does not preclude self-representation and it is not a due process violation. The right to conduct your own defense is not abrogated by any particular defense. It was not error to accept the defendant's counsel waiver.

Refusal to Allow Advisory Counsel Voir Dire

Defendant claimed he suffered from an organic personalty disorder. Just before calling his expert he told the court he was unprepared and wanted advisory counsel to examine the witness [Steve Avilla]. Although the prosecution did not object, the trial court did on the grounds that to do so would be "hybrid counsel."

Arizona does not recognize a constitutional right to "hybrid counsel"--where representation is by both counsel and the accused. The trial court and counsel may be confused, however, merely because it is not a constitutional right in Arizona does not preclude the court from allowing the defendant and advisory counsel to conduct a defense (as co-counsel). There is no law or cases against it. It is, however, within the trial court's discretion. But since the trial court was willing to allow the defendant to withdraw his waiver at any time, it was not an abuse of discretion. The court need not stop the trial for the defendant's convenience each time he changes his mind about counsel.

Prosecutorial Misconduct

First, the prosecutor [K.C. Scull] asked the defendant's expert witness questions designed to convey to the jury that a verdict of not guilty by reason of insanity would result in defendant's immediate release. The defendant objected belatedly and on the wrong grounds. A long line of cases supports that this is improper conduct. It diverts attention away from what the jury is to decide. Still, the error must be prejudicial and fundamental. Here it was mitigated by an instruction to jurors not to consider punishment. Plus, the witness did not answer the question and it was an inevitable one for the jurors anyway. Since the defendant's objections were untimely and on the wrong grounds, there must be fundamental error. Error is considered fundament when it goes to the case's foundation or is of such magnitude that it may not be said it was possible for the defendant to get a fair trial. Here, the brief event in the trial does not rise to fundamental error.

Second, the prosecutor implied that defense counsel "coached" the defendant to "feign symptoms of epilepsy." Advisory counsel asked to withdraw so that he could rebut the insinuations and the court denied his mistrial request. There is no question that the prosecutor intended to imply to the jurors that defense counsel coached defendant on feigning epilepsy. It is improper for prosecutors to make prejudicial insinuations without being able to prove them. This prosecutorial misconduct may be the basis for reversal and state bar discipline. However, here again the defendant failed to object and the misconduct did not rise to fundamental error.

(cont. on pg. 12)☞

Equal Protection Challenge to Death Penalty Statute

After the verdict, the defendant said he did not want to meet with a presentence writer. The probation officer did not meet with the defendant and recommended the death penalty. A defendant has a constitutional right not to talk to the presentence writer. The court was under no duty to see if the defendant later changed his mind. Plus, the defendant may waive a presentence report. It is not required in all cases, and in this case there is no demonstrable prejudice.

Mitigating Evidence

A.R.S. 13-703(C) requires the trial judge to disclose all information in the presentence report except "such material as the court determines is required to be withheld for the protection of human life." Plus such factors may not be considered by the trial judge. The court has previously rejected similar claims, and in this case no information was withheld.

Reversal of Conviction Trial Court Found to be Aggravating

Before the killing, defendant was charged with aggravated assault on his girlfriend's new boyfriend. Defendant was sentenced to life on that charge after conviction, and the trial court relied on it as an aggravating factor under 13-703(F)(1). This conviction was later reversed on appeal. After another trial, defendant was convicted of the lesser-included offense of disorderly conduct.

Reversal of the defendant's earlier assault case forces his death sentence to be reweighed. Normally, this case would be remanded to the trial court for resentencing, however, several factors in this case demand otherwise. The defendant's convictions are affirmed; however, his sentence is reduced to life imprisonment without the possibility of parole consecutive to all other sentences.

State v. Johnson
170 Ariz. Adv. Rep. 57 (Sup. Ct. 07/28/94 *en banc*)
Trial Judge E.G. Noyes, Jr.

Defendant was convicted of fraudulent schemes and artifice. He used company gas credit cards to bill various vehicles. He was sentenced to concurrent terms of nine years on the fraud and four years on an earlier conviction for which he was on probation.

Defendant argues that he should only have been convicted of theft instead of fraud. The fraud statute provides that a person commits a scheme or artifice to defraud by knowingly obtaining any benefit by *means of false or fraudulent pretenses, representations, promises or material omissions*. Defendant argued for a directed verdict on the grounds that no evidence was presented that he obtained the cards by means of false or fraudulent pretenses, representations or material omissions. The state argued on various theories, the most cogent of which was using the card was a breach of the trust relationship arising in employment.

Here the defendant admits a scheme and knowledge, however, claims that final element of the crime is missing. False pretense is a key element of fraud and separates it from theft. The statute's language means that the false pretense must actually cause the victim to rely on it. Theft by embezzlement occurs when a person converts for unauthorized use property of another entrusted to him. Here the defendant obtained two benefits: the cards and the gas. He did nothing to obtain the card by false pretense and when he obtained the gas did not represent doing so falsely. Defendant could be guilty of theft but not fraud. Conviction for fraud reversed and remanded for proceedings consistent with the opinion.

State v. Agee
170 Ariz. Adv. Rep. 62 (Div. 1, 08/02/94)
Trial Judge Cheryl K. Hendrix
Appeal by Spencer Heffel, MCPD

Defendant was charged with felony DUI while his license was suspended on October 24, 1992. He failed the "customary" field sobriety tests and his BAC was 0.167. Defendant's defense was that he believed the restricted license he received from DMV allowed him to drive to and from work. The restricted license was dated October 19, 1992; however, on another line it provided that the restricted license action date begins on October 26, 1992.

The defendant testified at trial to the above theory of the case. Among other instructions, he requested an instruction as to the "knowledge" element of the suspension and a theory of the case instruction. The trial court denied both. The state claims that 28-445 does not require *mens rea*, that it is in essence a strict liability offense. The court finds that the statute in question and subsequent amendments do not eliminate the *mens rea* requirement. The state must prove that the defendant

(cont. on pg. 13)☞

knew or should have known his license was suspended. The trial court refused any instructions regarding the critical element of the case--the status of his license on the day of the offense. Defendant is entitled to the actual knowledge instruction in question, and a theory of the case instruction as long as it is reasonably supported by the evidence. The judgment is reversed and remanded for a new trial.

Volume 171

State v. Superior Court (Norris)
171 Ariz. Adv. Rep. 9 (Div. 1, 08/09/94)
Trial Judge Richard Anderson

Defendant was convicted in city court of violations of A.R.S. 28-692(A)(1) and (A)(2). At trial the defendant moved to dismiss the case because the arresting officer failed to inform him of his right to an independent blood test under A.R.S. 28-692(H). The city court denied the motion and the matter was appealed to superior court. The superior court reversed and this special action petition resulted.

This is a case of first impression for the amended DUI statute. The trial court erred in its analysis that the amended statute shifts the burden of proof and that 692(H) mandates an independent test. 692(H) only requires police to give DUI suspects a reasonable opportunity to obtain an independent test. The court has consistently held that police do not have to inform DUI suspects of their right to independent testing. The only time police must inform the suspect of an independent test under *Montano* is where there is no breathalyzer available and implied consent is *not* invoked. Language the defendant relies on in *Dean* and *Velasco* is misplaced. It is dictum. It is incumbent on police to ensure DUI suspects have a reasonable opportunity to obtain their own independent test to counter the state's scientific evidence. Hence, there is no duty to inform, only a duty not to prevent the defendant from obtaining such a test. In this case the defendant was not prohibited from obtaining an independent test had he sought one. The superior court's order is dismissed and the convictions are affirmed.

Volume 172

Begay v. Superior Court,
172 Ariz. Adv. Rep. 31 (Div. 1 08/23/94)
Trial Judge Thomas L. Wing

Defendant, a Navajo, was convicted of a class 6 theft offense for writing checks for groceries on a closed account. Defendant repaid restitution before sentencing and the offense was designated a misdemeanor but with supervised probation. Defendant lives on the Navajo reservation with a Native American woman and her two children. In imposing probation, the trial court, among other terms of probation, also ordered that the defendant not cohabit with any person unless married. The trial court lectured the defendant that this would be in the children's best interest and that it was against the law to cohabit in Arizona (A.R.S. 13-1409).

A special action was filed challenging the order since the defendant entered a plea agreement and does not have a direct appeal right. Defendant challenges the constitutionality of A.R.S. 13-1409 and its applicability to a Native American living on a reservation.

Although Arizona may try a Native American for a criminal act committed off the reservation, it has not sought criminal jurisdiction over Indians on the reservation. The trial court may not regulate Native Americans' behavior by superimposing state criminal law on activities on the reservation. A special probation condition keeping the defendant from living with the mother of his children on the Navajo reservation is void as unenforceable. That probation condition is stricken.

State v. Ellevan,
172 Ariz. Adv. Rep. 34 (Div. 1, 08/23/94)
Trial Judge Richard Anderson

Defendant pled guilty to two theft counts, criminal damage, unlawful flight, and possession of drug paraphernalia. Defendant had a long, intravenous-drug history. Sentencing was left to the court's discretion; the court found no mitigating circumstances and some aggravating ones. He was sentenced to 16.75 years of prison. The conviction was later affirmed.

In 1993, defendant filed a PCR on the grounds that there was newly-discovered evidence that if known at sentencing would probably have mitigated his sentence. The newly discovered evidence was that he was HIV positive. The trial court held a hearing on the issue and decided that the defendant did not meet his burden of proof in showing that he was HIV positive at sentencing.

Positive HIV status is material to informed plea bargaining and sentencing because it turns a sentence into a life sentence that would otherwise be a term of years. At the hearing the defendant's burden was to show by the preponderance of the evidence that he was already HIV positive at sentencing.

(cont. on pg. 14)☞

Defendant presented one witness and also testified. The prison doctor opined that the defendant may have contracted the disease as early as 1987, however, there was no way to determine when defendant contracted the disease. He did state, however, that defendant's condition may already be full-blown AIDS. Defendant testified that he later learned a girlfriend, with whom he had been five years before, was HIV positive. The state presented no evidence.

Defendant met the burden of proof. He presented evidence and statistics showing that it was more likely than not that he was infected prior to sentencing. Although the trial court has discretion, here substantial evidence was introduced supporting his theory. Remanded for resentencing.

State v. Johnson (Buccola),
172 Ariz. Adv. Rep. 58 (Div. 1, 08/30/94)
Trial Judge Stephen A. Gerst

Defendant was cited for various civil and criminal traffic violations, including driving on a suspended license. At trial the state tried to prove defendant's license was suspended by offering *computer-generated* MVD driver's license records. Defendant objected on the grounds the records were improperly certified. Defendant called *Marie Lenze*, the purported document's signer. Lenze testified that her signature was computer generated and that she had never seen the defendant's driving record report or compared the information with data on MVD's computer system.

The trial court concluded that *Irving* requires "human involvement" for MVD records in order to make them admissible under A.R.S. 28-110(F) and that allowing the records in under Evidence Rule 901(b) would negate the statute's intent. The superior court accepted special action jurisdiction, however, denied the state's requested relief. This appeal followed.

The court looked at two issues: whether the records were admissible under A.R.S. 28-110(F) and under Rule 901(b). The court reasoned that A.R.S. 28-110(F) does indeed allow certain MVD records to be admissible without further foundation with a proper certification. The court addressed the issue left open in *Irving* which was whether the certification of MVD records under A.R.S. 28-110(F) may be done by an unverified and totally automated certification. It may not. Competency to make certification requires the person making the certification to *(1) review the documents certified; (2) be familiar with the person who prepared the documents certified; and (3) be familiar with the manner in which the documents were prepared.* In this case Lenze did not possess this knowledge and in the absence of A.R.S. 28-110(F) the information could not be admitted. A.R.S. 28-110(F), however, purports to eliminate the need for someone from MVD to testify. Here, however, the computer in essence "certifies" the documents. A.R.S. 28-110(F) is a mere supplement to the evidence rules. MVD, in order to comply with A.R.S. 28-110(F), must have some human involvement. While compliance with A.R.S. 28-110(F) does relieve a custodian of records from being present at trial, it does not relieve the responsibility of the person who prints the document from personal knowledge.

However, A.R.S. 28-110(F) must co-exist with Rule 901. The court must consider introduction of the documents under evidence rules. Rule 901 sets forth several means of sufficient authentication. Lenze provided sufficient testimony for the document's introduction under Rule 901. The documents had distinctive characteristics and were kept by MVD in a public office. Under the totality of the circumstances, the trial court should have allowed the record admission under Rule 901. Case remanded for further proceedings consistent with this opinion. Ω

August Jury Trials

July 26

Joe Stazzone: Client charged with seven counts of child molestation and two counts of sexual conduct with a minor. Trial before Judge Rogers ended August 4. **Judgment of acquittal** on one count of child molestation; guilty on all other counts. Prosecutor L. Schroeder.

July 28

Lisa Gilels: Client charged with theft, possession of dangerous drugs, and possession of drug paraphernalia (with six priors and while on parole). Trial before Judge Seidel ended August 3. Client found guilty of lesser theft (class 5). Prosecutor L. Krabbe.

(cont. on pg. 15)☞

July 29

Larry Grant: Client charged with felony possession of marijuana. Bench trial before Judge Rogers ended July 29. Client found guilty of misdemeanor possession of marijuana. Prosecutor J. Bernstein.

August 1

Todd Coolidge: Client charged with possession of marijuana. Trial before Judge Roberts ended August 3. Client found **not guilty**. Prosecutor Rizer.

August 3

Barbara Spencer: Client charged with possession of narcotic drugs for sale, and misconduct involving weapons. Investigator R. Barwick. Trial before Judge Chornenky ended August 9. Client found guilty. Prosecutor D. Schlittner.

Robert Ventrella: Client charged with attempted possession of narcotic drugs. Trial before Judge DeLeon ended August 4. Client found guilty. Prosecutor P. Sullivan.

August 4

Larry Grant: Client charged with sale of narcotic drugs. Trial before Judge D'Angelo ended August 9. Client found guilty. Prosecutor M. Armijo.

Ray Schumacher: Client charged with theft. Investigator V. Dew. Trial before Judge Barker ended August 9. Client found **not guilty**. Prosecutor Martinez.

August 8

Brian Bond: Client charged with resisting arrest, criminal trespass and aggravated assault. Investigator J. Castro. Trial before Judge Rea ended August 11. Client found guilty of resisting arrest and criminal trespass charges; found **not guilty** of aggravated assault charge. Prosecutor Cunanan.

Louise Stark: Client charged with aggravated assault (dangerous). Investigator W. Woodriffe. Trial before Judge Mangum ended August 25. Client found **not guilty** of aggravated assault and guilty of disorderly conduct. Prosecutor Brnovich.

Ray Vaca: Client charged with aggravated assault. Trial before Judge Jarrett ended August 12. Client found **not guilty**. Prosecutor Peters.

August 12

Dan Carrion: Client charged with interfering with judicial proceeding. Bench trial before Judge McVay ended August 12. Client found **not guilty**. Prosecutor P. Nigro.

August 15

David Goldberg: Client charged with murder in the second degree. Investigator H. Jackson. Trial before Judge Bolton ended August 24. Client found **not guilty**. Prosecutor J. Ditsworth.

Colleen McNally: Client charged with resisting arrest, aggravated assault and escape. Investigator J. Allard. Trial before Judge O'Toole ended August 18. Client found guilty of resisting arrest and escape charges; **not guilty** of aggravated assault charge. Prosecutor A. Kever.

Barbara Spencer: Client charged with robbery. Investigator D. Erb. Trial before Judge Seidel ended August 16 with a **judgment of acquittal**. Prosecutor J. Collins.

Rickey Watson: Client charged with kidnapping, attempted armed robbery and aggravated assault. Bench trial before Judge Dougherty ended August 23. Client found guilty. Prosecutor Blomo.

August 16

John Taradash: Client charged with theft. Investigator J. Castro. Trial before Judge DeLeon ended August 19. Client found guilty. Prosecutor Sullivan.

August 17

Dan Carrion: Client charged with aggravated assault (dangerous). Trial before Judge Schwartz ended August 18. Client found **not guilty**. Prosecutor P. Howe.

Slade Lawson: Client charged with sexual abuse of a minor under the age of 15, sexual conduct with a minor, and two counts of child molestation. Investigator G. Beatty. Trial before Judge Jarrett ended August 25. Client found guilty. Prosecutor Campos.

(cont. on pg. 16)☞

Tim Ryan: Client charged with sexual abuse of a minor under the age of 15, sexual conduct with a minor, and child molestation. Investigator G. Beatty. Trial before Judge Jarrett ended August 28. Client found guilty. Prosecutor Campos.

Ray Schumacher: Client charged with armed burglary, two counts of aggravated assault, misconduct involving weapons, and criminal trespass. Investigator V. Dew. Trial before Judge Roberts ended August 30. Client found **not guilty** on armed robbery and criminal trespass charges; guilty of misdemeanor disorderly conduct and misconduct involving weapons. Prosecutor Hicks.

August 18

James Wilson: Client charged with custodial interference. Trial before Judge Seidel ended August 25 with a hung jury. Prosecutor B. Amato.

August 22

Gary Bevilacqua: Client charged with aggravated assault (dangerous). Trial before Judge DeLeon ended August 24 in a mistrial. Prosecutor V. Harris.

Tom Timmer: Client charged with aggravated assault (dangerous). Trial before Judge Anderson ended August 25. Client found guilty. Prosecutor Clarke.

August 23

Tom Kibler: Client charged with possession of dangerous drugs, possession of drug paraphernalia, possession of marijuana, and misconduct involving weapons. Trial before Judge Rogers ended August 25. Client found **not guilty**. Prosecutor M. Armijo.

August 29

David Goldberg: Client charged with aggravated DUI. Trial before Judge Rogers ended August 31 with a hung jury. Prosecutor S. Bartlett.

William Peterson: Client charged with felony aggravated assault. Investigator J. Allard. Trial before Judge Hauser ended September 1. Client found guilty of lesser included misdemeanor disorderly conduct. Prosecutor Macias.

Tom Timmer: Client charged with possession of dangerous drugs. Trial before Judge Silverman ended August 30. Client found guilty. Prosecutor Clarke.

August 30

Russ Born: Client charged with aggravated assault and kidnapping (dangerous). Trial before Judge Chornenky ended September 2. Client found **not guilty**. Prosecutor Brnovich.

Susan Corey: Client charged with DUI. Investigator J. Allard. Trial before Judge De Leon ended September 1. Client found guilty. Prosecutor Duarte.

Wesley Peterson: Client charged with four counts of child molestation. Investigator V. Dew. Trial before Judge Barker ended August 30 in a mistrial. Prosecutor Williams.

Charlie Vogel: Client charged with aggravated assault. Investigator P. Kasieta. Trial before Judge Schwartz ended August 31. Client found guilty. Prosecutor Mason.

August 31

Elizabeth Langford: Client charged with three counts of custodial interference. Investigator V. Dew. Bench trial before Judge Sheldon ended September 1 with a **judgment of acquittal** on counts 1 and 2, found **not guilty** on count 3. Prosecutor McKay. Ω

Bulletin Board

Speakers Bureau

Jodi Weisberg, a long-time member of our Speakers Bureau, will be participating in The Seventh Annual Seeds of Crisis Symposium, "Building Consensus: Lessons from the Past--Visions of the Future" on October 5, 6 and 7. Ms. Weisberg will be speaking on October 5 as part of a panel on "Advocates' Perspective of the Progress Made." The event, sponsored by The Mental Health Association of Maricopa County in cooperation with Tribune Newspapers, Arizona Department of Health Services and Samaritan Behavioral Services, will be held at the Central United Methodist Church.

(cont. on pg. 17)☞

Personnel Profiles

Volunteers/Interns:

Joan Dowden, a previous intern, enjoyed her work with us so much that she has decided to stay on as a volunteer. She will assist Jeff Reeves on days when his new intern (Kristina Leimbach) is not here.

Kristina Leimbach joined our office as an intern for Jeff Reeves on August 22. She is a political science major and a senior at ASU.

Cynthia Shillito is majoring in social work at ASU and as a part of her educational requirements this semester must perform 40 hours of community service. She started working in our Records Division at our southeast office on September 6.

Client Clothing Closet

And now for our monthly request for the Client Clothing Closet: belts and special trouser sizes, please. Tim Bein has noted a shortage of usable belts (our current ones are coming apart). He also advises that the closet needs larger sizes in trousers, e.g., trousers with 38" or larger waists, and trousers with longer lengths in any waist size. If you have any items to donate, please see Tim. And remember, you may obtain a receipt for donated items from Amy Bagdol. Thanks for your continued support of this popular, and very helpful service. Ω

The Trial Notebook

Editor's Note: More trivia

October 1

Rufus Choate, American Trial lawyer, author, and statesman, born 1799.

October 2

Thurgood Marshall, the first African-American U.S. Supreme Court Justice, sworn in 1967.

October 5

Robert Briney, Arizona public defender, prankster, land baron, and entrepreneur, born this date in 1898.

October 8

Following violent rioting by the unemployed in Trafalgar Square and other London locations, many people were sentenced to prison in 1887.

October 13

Italy granted Jews equality and abolished the ghetto in Rome in 1870.

October 14

In *New York Times v. Sullivan*, the Supreme Court established a strict standard for libel of public figures in 1963.

October 15

Captain Alfred Dreyfus is arrested and charged with espionage against France this date in 1894.

October 16

John Brown, abolitionist, attacked the federal armory in Harpers Ferry, Virginia in 1859.

October 17

President Jimmy Carter signed an amnesty bill restoring American citizenship to Jefferson Davis in 1978.

October 18

The Nuremberg war crime trials began in 1945.

October 21

The Syllabi, the first law reporter of the West Publishing Company, is published in 1876.

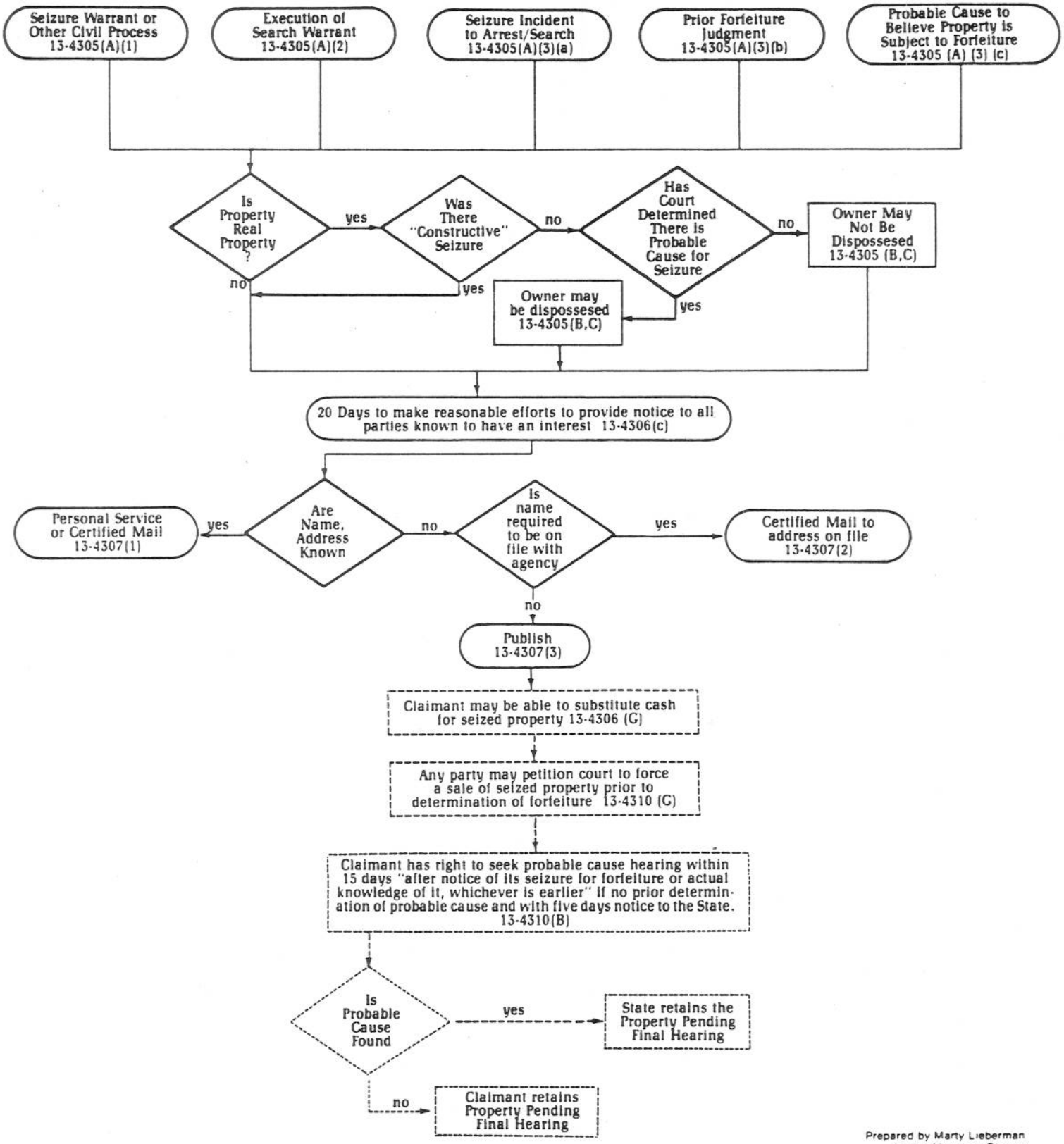
October 23

The Brooklyn Dodgers signed Jackie Robinson, the first black major league baseball player, in 1947.

October 29

Bobby Seale is gagged and handcuffed during the conspiracy trial of the Chicago Seven in 1969. Ω

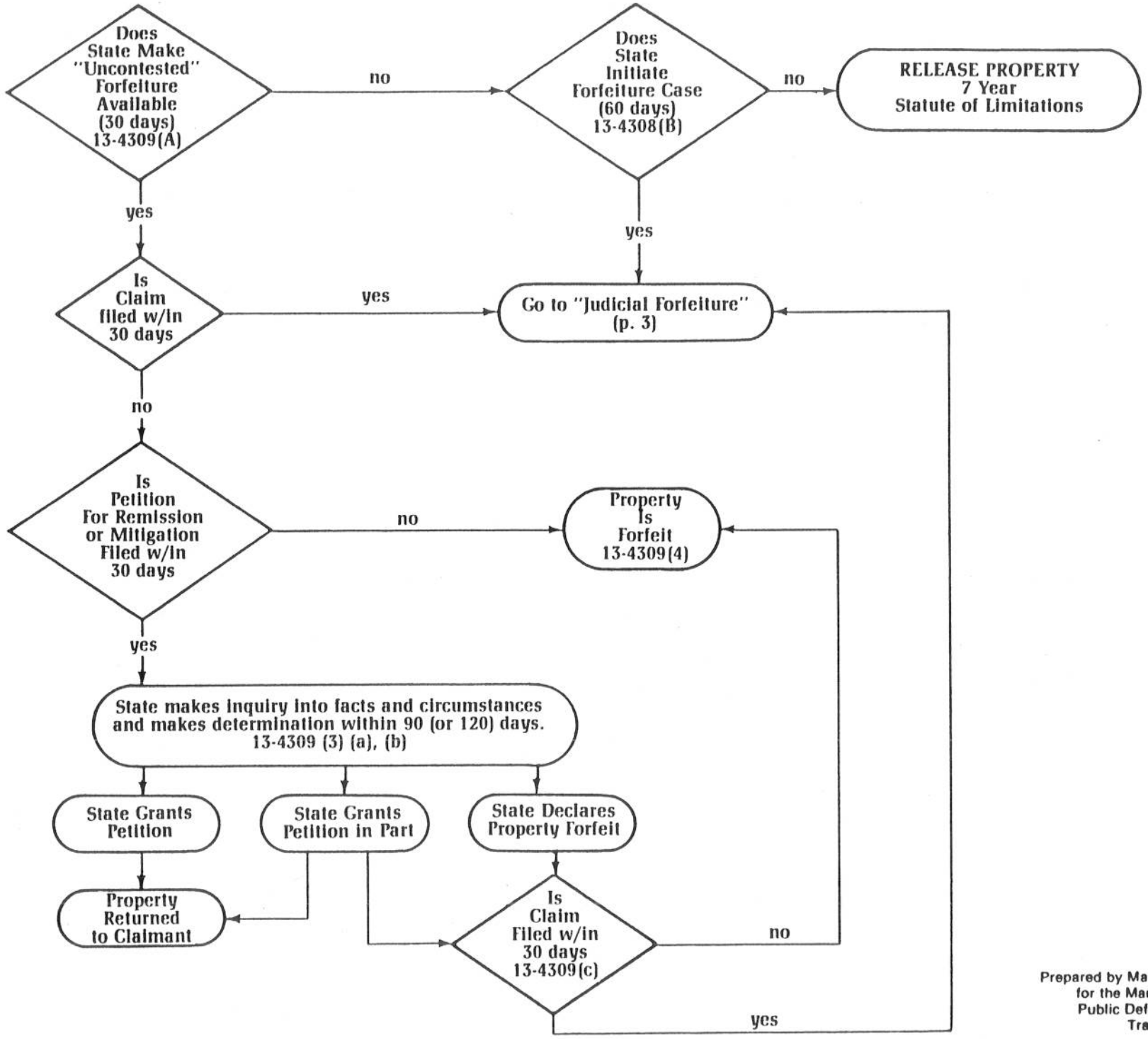
BASIC FORFEITURE PROCEDURE FLOW CHART



Prepared by Marty Lieberman
for the Maricopa County
Public Defender's Office
Training Division

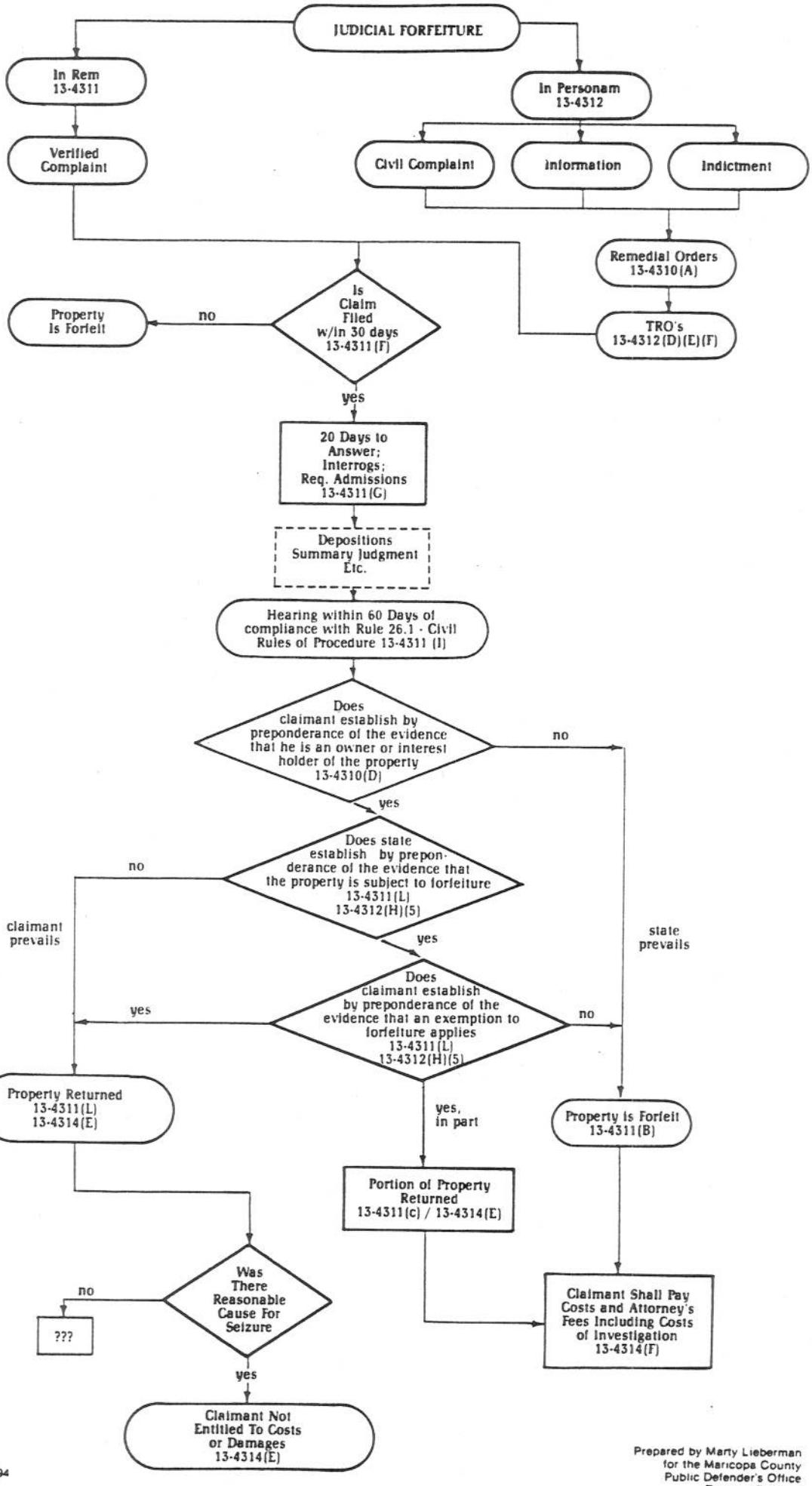
5-13-94

Page 1



5-13-94

Prepared by Marty Lieberman
for the Maricopa County
Public Defender's Office
Training Division



5-13-94

Prepared by Marty Lieberman
for the Maricopa County
Public Defender's Office
Training Division